Western Australia

Family Court Amendment Act 2021

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Western Australia

Family Court Amendment Act 2021

No. 16 of 2021

An Act to amend the *Family Court Act 1997*.

[*Assented to 9 September 2021*]

The Parliament of Western Australia enacts as follows:

##### 1. Short title

This is the *Family Court Amendment Act 2021*.

##### 2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on the day after that day.

##### 3. Act amended

This Act amends the *Family Court Act 1997*.

##### 4. Part 8 Division 3 inserted

At the end of Part 8 insert:

Division 3 — Cross‑examination of parties where allegations of family violence

219AJ. Application of Division

(1) In this section —

commencement day means the day on which the *Family Court Amendment Act 2021* section 4 comes into operation;

specified day means the day after the period of 90 days beginning on commencement day.

(2) This Division applies to cross‑examinations occurring on or after the specified day in proceedings instituted before, on or after the commencement day.

219AK. Mandatory protections for parties in certain cases — FLA s. 102NA

(1) The requirements of subsection (2) apply if, in proceedings under this Act —

(a) a party (the examining party) intends to cross‑examine another party (the witness party); and

(b) there is an allegation of family violence between the examining party and the witness party; and

(c) any of the following are satisfied —

(i) either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party;

(ii) a family violence order (other than an interim order) applies to both parties;

(iii) an injunction under section 235 or 235A for the personal protection of either party is directed against the other party;

(iv) the court makes an order that the requirements of subsection (2) are to apply to the cross‑examination.

(2) Both of the following requirements apply to the cross‑examination —

(a) the examining party must not cross‑examine the witness party personally;

(b) the cross‑examination must be conducted by an Australian legal practitioner acting on behalf of the examining party.

(3) The court may make an order under subsection (1)(c)(iv) —

(a) on its own initiative; or

(b) on the application of —

(i) the witness party; or

(ii) the examining party; or

(iii) if an independent children’s lawyer has been appointed for a child in relation to the proceedings — that lawyer.

219AL. Court‑ordered protections in other cases — FLA s. 102NB

(1) Subsection (2) applies if, in proceedings under this Act —

(a) a party (the examining party) intends to cross‑examine another party (the witness party) personally; and

(b) there is an allegation of family violence between the examining party and the witness party; and

(c) section 219AK does not apply to prevent the examining party cross‑examining the witness party personally.

(2) The court must ensure that during the cross‑examination there are appropriate protections for the party who is the alleged victim of the family violence.

##### 5. Section 243 amended

(1) In section 243(1) delete the passage that begins with “A person” and ends with “disseminate” and insert:

A person commits a crime if the person publishes in a newspaper or periodical publication or by radio broadcast, television or other electronic means, or otherwise disseminates

(2) In section 243(1) delete the Penalty and insert:

Penalty for this subsection:

(a) for an individual, imprisonment for 12 months and a fine of $5 500;

(b) for a body corporate, a fine of $11 000.

Summary conviction penalty for this subsection:

(a) for an individual, a fine of $2 750;

(b) for a body corporate, a fine of $5 500.

(3) In section 243(2) delete the passage that begins with “A person” and ends with “disseminate” and insert:

A person commits a crime if the person, except as permitted by the rules, publishes in a newspaper or periodical publication or by radio broadcast, television or other electronic means, or otherwise disseminates

(4) In section 243(2) delete the Penalty and insert:

Penalty for this subsection:

(a) for an individual, imprisonment for 12 months and a fine of $5 500;

(b) for a body corporate, a fine of $11 000.

Summary conviction penalty for this subsection:

(a) for an individual, a fine of $2 750;

(b) for a body corporate, a fine of $5 500.

(5) Delete section 243(5).

(6) After section 243(8)(a) insert:

(aa) the communication of any pleading, transcript of evidence or other document to an authority of a State or Territory that has responsibilities relating to the welfare of children and is prescribed by the regulations for the purposes of this paragraph; or



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